

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

DJURO G. ZRILIC,

Plaintiff,

v.

Civ. No. 07-416 PJK/RLP

BOARD OF REGENTS FOR NEW
MEXICO HIGHLANDS UNIVERSITY, *et al.*,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on Plaintiff's Motion to Compel. Plaintiff sought to take the deposition of Defendant E. R. Greene. Plaintiff provided Defendant Greene with a Notice to Take Deposition Duces Tecum on December 12, 2007. The deposition was to take place on December 19, 2007. Defendant Greene was requested to bring with him certain documents. Defendant Greene did not bring documents to the deposition. Plaintiff now seeks an order compelling the production of documents and the imposition of sanctions.

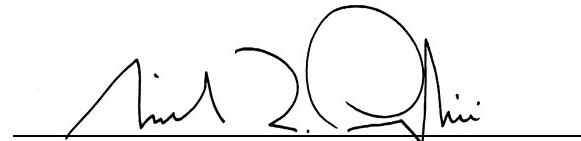
A party may not circumvent Fed.R.Civ.P. 34's 30-day time limit by noticing a deposition duces tecum on a party witness. The provisions of Rule 34 take precedence over Rules 30 and 45 when the deponent is a party. See *Contardo v. Merrill Lynch, Pierce, Fenner and Smith*, 119 F.R.D. 622 (D. Mass. 1988); *Epling v. UCB Films, Inc.*, 2001 WL 584355 (D. Kan. 2001) (unpublished opinion); *Orleman v. Jumpking, Inc.*, 2000 WL 1114849 (D. Kan. 2000) (unpublished opinion); 7 J. Wm. Moore Moore's Federal Practice § 30.22 (3d ed. 2008); 6 C. A. Wright, A. R. Miller & R. L. Marcus, Federal Practice and Procedure § 2108 (2d ed. 1994) ("Wright & Miller"). Similarly, Rule 45 is

subject to Rule 26 and deposition notices served after discovery ends, or that provide for a deposition to be taken after the end of discovery cannot be had. See generally 9A Wright & Miller, Federal Practice and Procedure § 2452 (3d ed. 2008). "Moreover, as one treatise observes, '[t]he only apparent reason for proceeding under Rule 45 would be to obtain the documents in less than the 30 days required by Rule 34.'" *Flagg v. City of Detroit*, 2008 WL 787039, *5 (E.D. Mich. 2008) (unpublished opinion) (quoting William W. Schwarzer et al., Federal Civil Procedure Before Trial, ¶ 11:1809.6).

If a party wants documents from another party, that party must follow the provisions set forth in Fed.R.Civ.P. 34, which gives the time, place, and manner for production, as well as the time to state objections and the procedures to follow in the event of non-production or objections.

IT IS THEREFORE ORDERED THAT Plaintiff's Motion for An Order Compelling Defendant E.R. Greene to Produce Documents Pursuant to the Notice of Deposition Duces Tecum [Doc. 58] is denied.

IT IS SO ORDERED.



Richard L. Puglisi
United States Magistrate Judge